

MAR 08 2002

PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Williams, et al.

Serial No.: 09/519,246

Filed: 6 March 2000

For: ENDOVASCULAR GRAFT
COATINGS

To: Assistant Commissioner for Patents
Washington, D.C. 20231

) Art Unit 3731

)

) Our Ref. 9896.143.0

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I hereby certify that this correspondence is being:

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By Madelyn Thompson

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RESPONSE TO RESTRICTION REQUIREMENT

In the Office Action mailed January 23, 2002, the initial period for response to which is set to expire February 23, 2002, the Examiner appears to have required restriction to one of the following inventions under 35 U.S.C. § 121.

- I. Claims 1-4, 10, 11-14, 20, 21 and Markush-type claims 5, and 15;
- II. Claims 1, 11 and Markush-type claims 6, 7, 16 and 17; or
- III. Claims 1, 11 and Markush-type claims 6, 8, 16 and 18.

In response to the restriction requirement, Applicants provisionally elect Group II, and more particularly Species 4 (collagen), with traverse.

At the outset, MPEP 802.02 clearly provides that an election of species requirement is merely a type of restriction requirement. As such, the present Office Actions fails to meet *either* of the two fundamental requirements of *any* restriction requirement, as set forth in MPEP 808, namely, that it provide: (1) reasons why the inventions *as claimed* are either independent or distinct, *and* (2) reasons for insisting on restriction therebetween. Accordingly, the election of

species requirement fails to meet the Office's own standards and should be withdrawn.

Moreover, the rules (37 CFR 1.141) provide that a reasonable number of species may be included in a single application, where, as here, other conditions are met.

Nevertheless, Applicants provisionally elect Group II, and Species 4, with traverse, and conditional upon a clear showing of the need and propriety of such a requirement. As addressed in the Action, it would appear that at least claims 1, 11, and Markush type claims 6, 7, 16 and 17 are readable on the elected species.

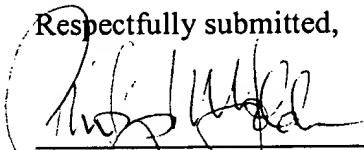
Examination of these various "groups" and species would not require additional search or impose significant burden on the Office, would facilitate the prosecution of this application, and is within the Examiner's discretion. In the event this requirement is maintained, the Examiner is encouraged to telephone the undersigned in order to discuss the matter.

In the event the Examiner maintains this requirement, he is encouraged to telephone the undersigned in order to discuss the matter, and if need be, to attend to whatever remaining requirements might be appurtenant to a proper election of species requirement.

The Commissioner is hereby authorized to charge any additional filing fees required to Deposit Account No. 061910. A duplicate copy of this sheet is enclosed.

Dated: 25 FEB 2002

Respectfully submitted,


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